

STATE OF MICHIGAN
DEPARTMENT OF LABOR AND ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE SERVICES

Before the Commissioner of Financial and Insurance Services

In the matter of:

BUTZ, GARRY A.

License/Registration No.: FL-2359

Enforcement Case No. 03-2163

Respondent.

Issued and entered
This 23rd day of March 2004
by Linda A. Watters
Commissioner of Financial and Insurance Services

FINAL ORDER

I

BACKGROUND

The Commissioner of the Office of Financial and Insurance Services (OFIS) is authorized under the Mortgage Brokers, Lenders, and Servicers Licensing Act (MBLSLA), MCL 445.1651 *et seq.* to license, renew a license, revoke, suspend or deny a license. Additionally, the Commissioner is authorized to assess penalties and civil fines for certain violations of the statute.

Further, licensees under the MBLSLA are obligated to submit an annual report and an annual financial statement. Should a licensee fail to submit the required reports, pay incurred penalties and fines, or comply with the Commissioner's Orders, the Commissioner is authorized to take action against the licensee up to and including assessing penalties and civil fines and revoking the license.

On November 7, 2003, staff of OFIS sent to Respondent by first class mail with sufficient postage affixed, a Notice of Opportunity to Show Compliance.

On or about December 8, 2003, a Notice of Intention to Revoke License was issued in this matter and mailed to Respondent via certified mail. Respondent received the Notice of Intention to Revoke License on December 10, 2003. The notice advised Respondent that:

“Within twenty (20) days after the issuance of this Notice of Intention to Revoke License, you must file a written request for a hearing if you desire to contest the order. If you fail to timely file a request for a hearing the commissioner will enter a final order revoking your license and assessing the maximum civil penalty and late filing fee permitted by statute.”

Respondent failed to file a request for a hearing within 20 days of receiving said Notice of Intention to Revoke. Section 12(1) of the MBLSLA provides that if a hearing is not requested within 20 days after the notice of intention to revoke, the Commissioner shall enter a final order regarding suspension or revocation.

Pursuant to Governor Engler’s Executive Order 2000-4, effective April 3, 2000, all authority, powers, duties, functions and responsibilities of the former Financial Institutions Bureau and its Commissioner were transferred to the Office of Financial and Insurance Services and its Commissioner, respectively.

II

ISSUE

The principal issues are whether Respondent failed to:

1. Submit its December 31, 2001 financial statement in a timely manner as required by section 7(2) of the MBLSLA, MCL 445.1657(2);

2. Pay a \$1,000 late penalty for the delinquent filing of its annual report for the year ended December 31, 2002, in violation of Commissioner's July 22, 2003 order and section 22(a) and section 22(i) of the MBLSLA, MCL 445.1672(a) and MCL 445.1672(i);

3. Pay a \$1,000 late penalty for the delinquent filing of its December 31, 2002 financial statement in violation of section 22(i) of the MBLSLA, MCL 445.1672(i).

III FINDINGS OF FACT

Based on the foregoing considerations, it is found that:

1. Respondent has been licensed with the Michigan Office of Financial and Insurance Services (OFIS) since March 26, 2001, pursuant to the provisions of the Mortgage Brokers, Lenders, and Servicers Licensing Act ("MBLSLA"), 1987 PA 173, as amended, MCL 445.1651 *et seq.*

2. The following facts are relevant to Issue No. 1:

A. On or about February 7, 2002, staff of the OFIS sent to Respondent by first class mail with sufficient postage affixed, a notice regarding the filing of annual financial statements and an approved financial statement form. The notice stated, in pertinent part:

"RE: Financial Statement – *Due 90 days after fiscal year end*

"Pursuant to Section 7(2) of the Mortgage Brokers, Lenders, and Servicers Licensing Act (Act), a licensee/registrant annually must deliver to the Commissioner a financial statement for its fiscal year, **not later than 90 days after the close of the fiscal year.**

* * *

"Section 8(6) of the Act states the following:

“A licensee or registrant that fails to submit to the commissioner the reports as required by sections 7 or section 21 is subject to a penalty of \$25.00 for each day the report is delinquent or \$1,000.00, whichever is less.

“Please Note: A financial statement received after the due date will be delinquent. A delinquent financial statement is subject to a penalty as discussed in Section 8(6) of the Act.”

- B. On or about April 15, 2002, staff of OFIS sent to Respondent by first class mail with sufficient postage affixed, a notice that its required financial statement had not been filed and that administrative action against the license/registration would be taken if the report was not immediately filed.
 - C. On October 21, 2003, pursuant to Section 11(2)(c) of the MBLSLA, MCL 445.1661(2)(c), OFIS staff initiated a review of filed financial statements to determine whether Respondent’s financial statement had been filed as required. Staff determined that Respondent failed to file its financial statement for the fiscal year ending in 2001.
 - D. By failing to file its financial statement within the time limit required by the MBLSLA, Respondent has violated Section 7(2) of the MBLSLA, MCL 445.1657(2).
3. The following facts are relevant to Issue No. 2:
- A. On July 22, 2003, OFIS Commissioner Linda A. Watters ordered Respondent to pay \$1,000 in late penalties for the late filing of its annual report for year ended December 31, 2002. Respondent remitted a check for \$500 on July 15, 2003, as partial payment of the \$1,000 late penalty. Respondent was ordered

to pay the remaining \$500 not later than 60 days following the date of the Consent Order.

B. On September 9, 2003, OFIS received notification that Respondent's \$500 check remitted on July 15, 2003, was returned by the bank for nonsufficient funds.

C. As of November 6, 2003, Respondent has failed to provide good funds for the \$500 check remitted on July 15, 2003, and has not remitted the remaining \$500 as originally ordered by Commissioner Watters in her Order dated July 22, 2003.

D. By failing to pay the \$1,000 late penalty fee as ordered, Respondent has violated the Commissioner's July 22, 2003 order and section 22(a) and section 22(i) of the MBLSLA, MCL 445.1672(a) and MCL 445.1672(i).

4. The following facts are relevant to Issue No. 3:

A. On July 17, 2003, Respondent was issued invoice No. E92427 in the amount of \$1,000 for a late penalty related to the delinquent filing of its December 31, 2002 financial statement, as provided by Section 8(6) of the MBLSLA.

B. As of November 6, 2003, OFIS staff determined that Respondent failed to pay the \$1,000 late penalty fee invoiced on July 17, 2003.

C. By failing to pay the late penalty fee invoice No. E92427 within a reasonable time, Respondent has violated section 22(i) of the MBLSLA, MCL 445.1672(i).

5. Section 12(1) of the MBLSLA provides that if a hearing is not requested within 20 days after the notice of intention to revoke, the commissioner shall enter a final order regarding suspension or revocation.

6. Respondent was provided proper notice of the opportunity for a hearing and the allegations and complaint.

7. Respondent has not requested a hearing in this matter.

IV

CONCLUSIONS OF LAW

Based upon a review of applicable laws, it is concluded that:

1. Respondent violated section 7(2) of MBLSLA, supra, by failing to submit its December 31, 2001 financial statement in a timely manner. The financial statement is more than 40 days overdue.

2. Respondent violated the Commissioner's July 22, 2003 order and Sections 22(a) and 22(i) of the MBLSLA by failing to pay a \$1,000 late penalty, in a timely manner, for the delinquent filing of its annual report for the year ended December 31, 2002.

3. Respondent violated Section 22(i) of the MBLSLA by failing to pay the \$1,000 late penalty fee invoice No. E92427, within a reasonable time, for the delinquent filing of its December 31, 2002 financial statement.

V

ORDER

Therefore, it is ORDERED that:

1. Respondent's license is revoked.

2. For violating section 7(2) of MBLSLA, supra, and pursuant to section 8(6) of MBLSLA, supra, Respondent shall pay a penalty of \$1,000.

3. For violating section 7(2) of MBLSLA, supra, pursuant to section 29(2)(a) of the MBLSLA, supra, Respondent shall pay a civil fine of \$1,000.

4. For violating the Commissioner's July 22, 2003 order and section 22(a) and section 22(i) of the MBLSLA, supra, for the late filing of its annual report for the year ended December 31, 2002, and pursuant to section 8(6) of MBLSLA, supra, Respondent shall pay a penalty of \$1,000.

5. For violating the Commissioner's July 22, 2003 order and section 22(a) and section 22(i) of the MBLSLA, supra, for the late filing of its annual report for the year ended December 31, 2002, and pursuant to section 29(2)(a) of the MBLSLA, supra, Respondent shall pay a civil fine of \$1,000.

6. For violating section 22(i) of the MBLSLA, supra, for the delinquent filing of its December 31, 2002 financial statement, and pursuant to section 8(6) of MBLSLA, supra, Respondent shall pay a penalty of \$1,000.

7. For violating section 22(i) of the MBLSLA, supra, for the delinquent filing of its December 31, 2002 financial statement, and pursuant to section 29(2)(a) of the MBLSLA, supra, Respondent shall pay a civil fine of \$1,000.

Linda A. Watters
Commissioner of Financial and
Insurance Services